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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,889	09/16/2003	Kerry Stephen McClure	27735-11	4514
68795	7590	01/29/2008		
ULMER & BERNE, LLP ATTN: DIANE BELL 600 VINE STREET SUITE 2800 CINCINNATI, OH 45202			EXAMINER LARSON, JUSTIN MATTHEW	
			ART UNIT 3782	PAPER NUMBER
			NOTIFICATION DATE 01/29/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocketing@ulmer.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/663,889	<b>Applicant(s)</b> MCCLURE ET AL.	
	<b>Examiner</b> Justin M. Larson	<b>Art Unit</b> 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 22,23 and 28-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22,23,28-38 and 40-51 is/are rejected.
- 7) ☒ Claim(s) 39 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1 A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/31/07 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

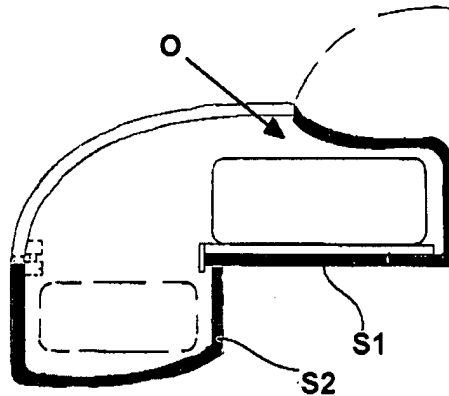
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 28-30 and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilson (US 4,230,246 A).

Regarding claims 28 and 30, Wilson discloses a vehicle (A) comprising: a first shell (S1, figure below) at least partially defining a spare tire storage chamber, an opening (O, below) providing access to the spare tire storage chamber, and a first region (end or tip of 13, as "region" is very broad) adjacent to the opening; a second shell (S2, below) adjacent to the first shell and defining a second region (surface of 73 proximate numeral 73, as "region" is very broad) and a third region (surface of 73 proximate numeral 71, as "region" is very broad); and a support member (15) adapted to support a spare tire, the support member being movable, i.e., capable of being

moved, with respect to the first shell among a first position (Figure 1) in which an engagement portion (17) of the support member complementarily engages or abuts the first region (13), a second position in which the engagement portion of the support member complementarily engages the second region (17 could be abutted and held against the surface of 73 proximate the numeral 73), and a third position in which the engagement portion of the support member complementarily engages the third region (17 could be abutted against the surface of 73 proximate the numeral 71).



Regarding claim 29, the support member is substantially disposed within the first shell in the first position and is at least partially disposed outside of the first shell and at least partially inside of the second shell when in the second and third positions.

Regarding claim 36, the second end portion of the first shell has an arcuate configuration (see arcuate corners in Figure 1) corresponding to the curvature of the outer circumference of a spare tire to the degree claimed.

Regarding claims 37 and 38, Wilson discloses a locking member (75) as claimed (see Figure 3).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 22, 23, and 31-35 are rejected under 35 U.S.C. 103(a) as being anticipated by Wilson in view of Fukushima et al. (2001/0052712), and further in view of Pilliod (US 5,484,198 A).

Regarding claims 31 and 33-35, the vehicle of Wilson includes the claimed features except for the lower surface of the support member directly contacting the bottom of the first shell. Instead, Wilson discloses a series of rollers (33) positioned on the bottom of the first shell. The support member slides on the rollers instead of directly contacting the first shell. Wilson also fails to disclose a pair of wheels rotatably attached to the first shell, the wheels cooperating with the bottom portion of the first shell to therebetween receive side sections of the support member such that the wheels contact the side sections when the support member is at the first position for limiting movement of the support member with respect to the first shell in at least one direction substantially perpendicular to the movement path.

Fukushima et al. also disclose a similar sliding support member housed within a shell (14) and teach that the lower surface of the support member directly contacts a bottom portion (17) of the shell (Figure 3, col. 5 lines 51-54) in smooth sliding contact. Pilliod discloses a drawer slidably received in a shell (52) and teaches that a pair of

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wheels (42) are mounted to the sides of the shell such that the wheels cooperate with the bottom portion of the shell to therebetween receive the side sections (22) of the drawer for limiting movement of the drawer with respect to the shell in at least one direction substantially perpendicular to the movement path to assist in the sliding of the drawer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the bottom-mounted roller system of Wilson with the side mounted wheel system of Pilliod as a mere substitution of known sliding drawer roller systems, in order to achieve the predictable result of a support member whose lower surface directly contacted a bottom portion of a shell, as taught by Fukushima et al.

Regarding claim 32, the support member of the modified Wilson vehicle would have the claimed degrees of inclination through the first, second, and third positions that are set forth in paragraph 3 above.

Regarding claims 22 and 23, the modified Wilson device includes all of the claimed features as set forth above. Upon further review, Examiner is of the position that the term "recessed region" is broad such that portions of members 13 and 73 of Wilson can be considered recessed regions.

6. Claims 40-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Fukushima et al. and Pilliod as applied above, and further in view of Felix (US 6,155,625 A).

The modified Wilson device includes the claimed features except for the vehicle in which it is mounted being a pickup truck such that the device is mounted beneath the cargo carrying floor of the pickup truck. The modified Wilson device is implemented in

the trunk of a car, as taught by Wilson himself. Felix, however, teaches that it is desirable to provide a storage compartment beneath the cargo carrying floor of a pickup truck, the compartment being useful for storing a spare tire and other items. One of ordinary skill in the art would have found it obvious to somehow mount the modified Wilson storage system beneath the cargo carrying floor of a pickup truck, as taught by Felix, so that pickup truck owners could also enjoy the benefit of such a useful storage system.

***Allowable Subject Matter***

7. Claim 39 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. While Examiner is of the position that the terms "region" and "recessed region" are quite broad, claim 39 specifies that the regions are in fact recesses. Examiner is of the position that a recess is more specific than a recessed region and finds no teaching or motivation for providing distinct recesses in three different regions of the Wilson device in order to maintain the support member (15) in three different positions.

***Response to Arguments***

8. Applicant's arguments filed 10/31/07 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML  
1/21/08

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER